



IN THE CIRCUIT COURT OF MCDONALD COUNTY, MISSOURI

Judge or Division: TIMOTHY WAYNE PERIGO	Case Number: 06MC-CV00117
Plaintiff/Petitioner: TRI-STATE HDWE, INC	Plaintiff's/Petitioner's Attorney/Address: MERL LYNN STANLEY Jr. P O BOX 1626 JOPLIN, MO 64801
vs.	(Date File Stamp)
Defendant/Respondent: JOHN DEERE COMPANY	Court Address: P.O BOX 157 PINEVILLE, MO 64856
Nature of Suit: CC Other Miscellaneous Actions	

Summons for Service by Registered or Certified Mail

The State of Missouri to: JOHN DEERE COMPANY
Alias:

4401 BLAND ROAD, SUITE 200
RALEIGH, NC 27602

COURT SEAL OF



MCDONALD COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner, or Plaintiff/Petitioner, if pro se, at the above address all within 30 days after the return registered or certified mail receipt signed by you has been filed in this cause. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in the petition.

Feb 10, 2006
Date Issued

Bene Hall
Clerk

Further Information:
sent certified mail

Certificate of Mailing

I certify that on Feb 10, 2006 (date), I mailed a copy of this summons and a copy of the petition to Defendant/Respondent JOHN DEERE COMPANY by registered or certified mail, requesting a return receipt by the addressee only, to the said Defendant/Respondent at the address furnished by Plaintiff/Petitioner.

Feb 10, 2006
Date

Bene Hall
Clerk

By: Cheryl Wimpsey
Deputy

For Court Use Only: Document ID # 06-SMCM-24

FEB - 6 2006

CIRCUIT CLERK
McDONALD COUNTY MO

IN THE CIRCUIT OF MCDONALD COUNTY, MISSOURI
AT PINEVILLE

TRI-STATE HDWE. INC.,

Plaintiff,

VS.

JOHN DEERE COMPANY, a Division of
Deere & Company,

Defendant.

No. 06ME-CV00117

PETITION

Comes now plaintiff and for its cause of action against defendant, states as follows:

COUNT I

WRONGFUL TERMINATION

1. Plaintiff is a Missouri corporation authorized and doing business in the State of Missouri with its principal office located at 107 Main Street, South West City, McDonald County, Missouri.
2. Defendant is a foreign corporation with its principal office at 4401 Bland Road, Suite 200, Raleigh, North Carolina.
3. That plaintiff is a farm equipment dealer as set out in RSMo. § 407.838.
4. That defendant wrongfully terminated plaintiff's franchise.
5. That pursuant to RSMo. §407.848, plaintiff is entitled to judgment against defendant for damages for the unlawful termination and the cost of this action including a reasonable attorney fee.
6. That as a direct result of defendant's wrongful conduct, plaintiff has been damaged in that it has lost a valuable franchise that it had spent years and money

developing, has lost sales that would have been made and lost services that would have been performed if defendant had not breached RSMo. §407.838, and it will lose sales and income in the future because of defendant's wrongful termination.

COUNT II

BREACH OF CONTRACT

Comes now plaintiff and for Count II of its action against defendant, states as follows:

7. Plaintiff re-alleges each and every allegation set out in paragraphs 1 through 6 of Count I as if set out herein in haec verba.

8. Plaintiff had a contract with defendant under which plaintiff was a John Deere dealer authorized to sell and service John Deere products.

9. Under that agreement, defendant had an implied obligation of good faith and fair dealing.

10. Plaintiff performed all obligations required by the agreement.

11. Defendant breached the agreement by failing to timely supply plaintiff with merchandise, delivering inventory after the growing season had ended and by canceling orders placed by plaintiff.

12. That as a direct result of defendant's breach, plaintiff has been damaged in that it has lost a valuable franchise that it had spent years and money developing, has lost sales that would have been made and lost services that would have been performed, and will lose sales and income in the future.

COUNT III

INTERFERENCE WITH A BUSINESS EXPECTANCY

Comes now plaintiff and for Count III of its action against defendant, states as follows:

13. Plaintiff re-alleges each and every allegation set out in paragraphs 1 through 6 of Count I and paragraphs 7 through 12 of Count II as if set out herein in haec verba.

14. After defendant informed plaintiff it would terminate its franchise, plaintiff located several buyers for the franchise and its stock of merchandise.

15. The buyers were ready, willing and able to purchase plaintiff's franchise and merchandise for good and valuable consideration.

16. Plaintiff requested the defendant approve these sales.

17. Defendant knew the plaintiff had a business expectancy with the individuals but in restraint of trade, with bad motive and without justification, defendant refused to approve any of the sales, and moreover; would not even speak with other interested buyers.

18. That as a direct result of defendant's interference and refusal to approve these sales to ready, willing and able buyers, plaintiff has been damaged in that it was forced to sell its merchandise at an auction at a greatly discounted rate, and plaintiff received no money for the franchise it had spent years and money developing when defendant took the franchise away and awarded it to one of its own employees, therefore; plaintiff is entitled to lost profit for the sale of its franchise and merchandise and to punitive damages.

WHEREFORE, in addition to the actual damages suffered by plaintiff, plaintiff prays for judgment of punitive damages against defendant that will serve to deter defendant from like behavior in the future.

BLANCHARD, ROBERTSON, MITCHELL & CARTER, P.C.

By  _____

Ron Mitchell, Bar No. 24031

M. Lynn Stanley, Jr., Bar No. 51840

320 West 4th Street, P. O. Box 1626

Joplin, MO 64802

(417) 623-1515

ATTORNEYS FOR PLAINTIFF



JOHN DEERE

John Deere Company
11145 Thompson Ave., Lenexa, KS 66219 USA
Phone: 913-310-8848 Fax: 913-310-8875
E-mail: PhillipsWally@JohnDeere.com

Wally Phillips
Division Manager, Marketing

3RD YEAR LETTER

CONFIDENTIAL
Certified Mail
Return Receipt Requested

January 15, 2004

Tri-State Hardware Inc.
107 Main
South West City, Missouri 64863

Attention: Mr. Charles Wolfe

Your market share performance for Oct. 2001 was 30.1% and Oct. 2002 was 18.2%. Last year we discussed your historical market share was still unacceptable and established a minimum goal of 36.3% ending Oct. 2003. Please consider this letter confirmation of your conversation, which took place with Ben Dohrmann, which showed your market share at 23.1% ending Oct. 2003.

Section 3 of the Dealer Agreement provides that the dealer's appointment as a John Deere Dealer may be cancelled "if the Company believes the dealer is not fulfilling the requirements of his appointment." One of the requirements of your appointment as a John Deere dealer is set forth in Section 1 (d) of the Dealer Agreement. That requirement states the dealer agrees "to achieve sales objectives and market share penetration within the dealer's area of responsibility satisfactory to the Company."

For fiscal year ending Oct. 2004 we expect Tri-State Hardware Inc. to achieve a minimum market share of 39.3%. Failure to achieve these minimums and failure to maintain these increases may result in termination of your appointment as a John Deere dealer.

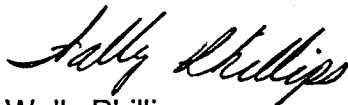
EXHIBIT "1"

Page Two

This market share requirement is an absolute minimum as it is well below Branch, Division, or Territory market share averages achieved by our dealer organization. We want to assist and support your efforts to achieve the minimum market share requirements we have established. Please complete and implement your 2004 marketing plan with the support of your TM, AMPS & AMPSS.

We reserve the right to adjust market share requirements as we deem appropriate in light of future conditions.

Sincerely,

A handwritten signature in cursive script, reading "Wally Phillips".

Wally Phillips
Division Manager, Marketing

cc: Bob Timmons
Larry Dow
Doug Allen
Brian Payne
Bill Saxton
Ben Dohrmann
Jeremy Knuth
Steve Cadman

Report: Model Summary
Current Tir Nov 1996 - Oct 1997
Product Fa 2wd Tractors < 80 Hp
State(s): Missouri

[illegible]

A black and white photograph of a small, rectangular, textured object, possibly a piece of evidence or a small box, with the words "DEPENDANT'S EXHIBIT" printed on it. The object has a dark, grainy surface and a lighter border. The text is in a bold, sans-serif font. The word "DEPENDANT'S" is on the top line, and "EXHIBIT" is on the bottom line. The object is oriented vertically in the frame.

SMPDS Whole Goods - US DOLLARS - Product Short Report

Organization: 057018 JOPLIN, MO

All Dealers Product Groups:

Data updated: March 19, 2000

Not Sorted

Commercial Products
Top Level Products

Product	Month-to-Date			Year-to-Date			Rolling 12 (R62)			Inventory	
	MTD	LMTD	Diff	YTD	LYTD	Diff	Curr	Prv	Inv	Orders	RAID
*** 5000/510/10N/00N	0	0	0	0	18,996	-19,996	0	41,552	3	2	2
*** LOADERS	0	0	0	0	0	0	0	0	0	4	2
*** TOTAL CUTTERS	0	0	0	0	0	0	0	0	4	0	2
*** COMM T ROTARY TILLER	0	0	0	0	0	0	0	1,142	4	0	2
*** COMMERCIAL LOADERS	0	0	0	0	0	0	0	0	1	0	0
*** COMPACT TRACTORS	0	0	0	0	0	0	0	4,292	2	10	10
*** TOT COMM RCL VEH	0	0	0	0	0	0	0	48,698	7	14	14
*** FRNT MNT ZTRAK MWR	0	0	0	0	11,111	-11,111	0	23,245	6	3	4
*** COMM FM MOWERS	0	0	0	0	0	0	0	0	3	0	2
*** COMM W/B MOWERS	0	0	0	0	0	0	0	16,140	0	0	0
*** TRACT ROTARY MOWERS	0	0	0	0	0	0	0	0	2	0	0
*** COMM MAT COLLECT SYS	0	0	0	0	0	0	0	3,225	9	0	0
Totals	0	0	0	0	31,107	-31,107	0	138,294	38	33	33

DEFENDANT'S EXHIBIT

EXHIBIT "3"



Please forward comments to SMPDS Support.
Help printing this document. Help exporting this document.
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Return to Request

Help

1997 \$ 17,522.00
1998 \$ 107,187.00
1999 \$ 81,045.00
2000 \$ - 0 -

COMMERCIAL
SELEMENTS

FEB - 6 2006

CIRCUIT CLERK
McDONALD COUNTY MO

IN THE CIRCUIT OF MCDONALD COUNTY, MISSOURI
AT PINEVILLE

TRI-STATE HDWE. INC.,

Plaintiff,

VS.

JOHN DEERE COMPANY, a Division of
Deere & Company,

Defendant.

No. 06MC-CV00117

NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL

TO: JOHN DEERE COMPANY, a Division of Deere & Company,
One John Deere Place, Moline, IL 61265

The enclosed summons, Petition, Request For Production, and Interrogatories are served pursuant to section 506.150 RSMo.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within thirty days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association, including a partnership, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within thirty days, you or the party on which behalf you are

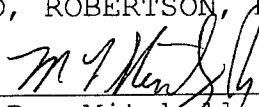
being served may be required to pay any expenses incurred in serving a summons and petition in any other manner permitted by law.

If you do complete and return this form, you or the party on whose behalf you are being served must answer the petition within thirty days of the date you sign the acknowledgment below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the petition.

I declare, under penalty of filing a false affidavit, that this Notice and Acknowledgment of Receipt of Summons, Petition, Request for Production and Interrogatories were mailed on February 3, 2006.

BLANCHARD, ROBERTSON, MITCHELL & CARTER, P.C.

By



Ron Mitchell, Bar No. 24031
M. Lynn Stanley, Jr., Bar No. 51840
320 West 4th Street, P. O. Box 1626
Joplin, MO 64802
(417) 623-1515

ATTORNEYS FOR DEFENDANTS

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND PETITION

I declare, under penalty of filing a false affidavit, that I received a copy of the Summons, Petition, Request for Production, and Interrogatories in the above captioned matter.

Signature

Relationship To Entity/Authority
Receive Service of Process

Date